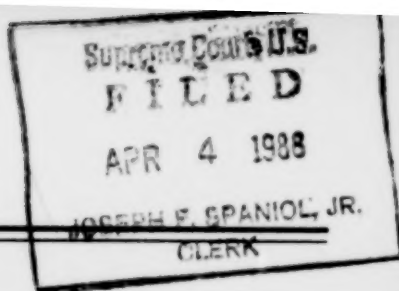


No. 87-1017



IN THE
SUPREME COURT OF THE UNITED STATE
OCTOBER TERM, 1987

RONALD S. MONROE,

Petitioner,

v.

HILTON BUTLER,
WARDEN, LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
CRIMINAL DISTRICT COURT FOR THE PARISH
OF ORLEANS, LOUISIANA

PETITIONER'S REPLY BRIEF

Allan Blumstein
(Counsel of Record)
Douglas G. Morris
Paul, Weiss, Rifkind,
Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
(212) 373-300

John DiGiulio
331 St. Ferdinand
Baton Rouge, Louisiana 70802
(504) 383-0078

TABLE OF CONTENTS

	Page
Adequate and Independent State Grounds	2
Collateral Estoppel	3

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	3
<i>Enterprise Irrigation District v. Farmers Mutual Canal Co.</i> , 243 U.S. 157 (1917)	2
<i>Henry v. Mississippi</i> , 379 U.S. 443 (1965)	3
<i>Herb v. Pitcairn</i> , 324 U.S. 117 (1945)	2
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	2
<i>Michigan-Wisconsin Pipe Line Co. v. Calvert</i> , 347 U.S. 157 (1954)	3
<i>Stembridge v. Georgia</i> , 343 U.S. 541 (1952)	3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

RONALD S. MONROE,

Petitioner,

v.

HILTON BUTLER,
WARDEN, LOUISIANA STATE PENITENTIARY,
ANGOLA, LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE CRIMINAL DISTRICT COURT
FOR THE PARISH OF ORLEANS, LOUISIANA

PETITIONER'S REPLY BRIEF

In its Reply to Petition for Writ of Certiorari, Respondent's Brief in Opposition ("State Br."), the State denies that Monroe has presented a proper federal question, *id.* at 5, 6, or that this case involves collateral estoppel. *Id.* at 1, 6, 9. The State can deny the existence of those issues only by ignoring them.

Adequate and Independent State Grounds

The State begins its argument with an attempt to insulate the Criminal District Court's judgment from this Court's review by invoking the principle of adequate and independent state grounds. State Br. at 5. That principle is that this Court will not review "judgments of state courts . . . if the same judgment would be rendered by the state court after we corrected its views of federal laws" *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945). But the Criminal District Court's denial of a motion for a new trial cannot provide adequate and independent state grounds since the state court's evidentiary findings underlying that denial is precisely what Monroe attacks as violating his federal constitutional rights. And this Court certainly has the power "to correct [state judgments] to the extent that they incorrectly adjudge federal rights." *Id.* 1/

By incorrectly invoking the principle of adequate and independent state grounds, the State neatly avoids addressing the relevant principle here: the Supremacy Clause. It is surely a federal question worthy of this Court's review whether, under the Supremacy Clause, the Criminal District Court is bound to give effect to the federal district court's determination of federal *Brady* issues under federal principles of collateral estoppel. See Petition for a Writ of

^{1/} Many of this Court's cases leave no doubt that this Court has jurisdiction here. *E.g.*, *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) ("We have long recognized that dismissal is inappropriate 'where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below.'"); *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917) ("Where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient

(Continued)

Certiorari at 11-15. The answer to that question -- which the State simply ignores -- is yes.

Collateral Estoppel

Here the federal district court found that (i) the State violated Monroe's constitutional rights under *Brady v. Maryland*, 373 U.S. 83 (1963), (ii) the State violated Monroe's *Brady* rights by an unlawful post-conviction suppression of evidence, and (iii) the suppressed evidence was material and exculpatory. 2/ Directly contrary to the federal

(Continued)

breadth to sustain the judgment without any decision of the other, our jurisdiction is plain.").

The State is misguided in finding any significance for the case here in either *Henry v. Mississippi*, 379 U.S. 443 (1965) or *Stembridge v. Georgia*, 343 U.S. 541 (1952). *Henry* stands for the proposition that an adequate and independent state ground is a litigant's default under a state procedural rule which serves a legitimate state interest. *Henry v. Mississippi*, 379 U.S. 443, 447 (1965). But the Criminal District Court's denial of a federal right here has nothing to do with the kind of procedural default at issue in *Henry*. *Stembridge* stands for the additional proposition that this Court will not review a state court order unless passed upon by the highest court in the state in which a decision could be had. *Stembridge v. Georgia*, 343 U.S. 541, 546 (1952). Whereas the petitioner in *Stembridge* did not ask the Georgia Supreme Court to review the order at issue, Monroe applied to the Louisiana Supreme Court to issue a supervisory writ and to review the Criminal District Court's order, and the Louisiana Supreme Court denied the application. Thus, unlike the order at issue in *Stembridge*, the order here has been passed upon by the highest court in the state in which a decision could be had. See also *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954).

^{2/} The State incorrectly asserts: "Neither the federal magistrate nor the district judge who adopted the magistrate's findings, found that another 'confession' existed." State Br. at 7. The federal courts can speak for themselves. The federal magistrate stated:

district court's findings, the Criminal District Court found that (i) the State did not violate Monroe's *Brady* rights, (ii) the State did not unlawfully suppress post-conviction evidence, and (iii) the evidence at issue was neither exculpatory nor material. How much clearer could it be that the state court blatantly disregarded and defied findings of a federal district court to which the state court was bound to give effect?

Even the State cannot deny the direct conflict between the federal and state courts on a federal constitutional right. The State admits "that the state district court and the federal district court made opposing findings," and that "the findings of fact and law which support [the federal district court's] judgment . . . has both parties in constant disagree-

(Continued)

It is hard to imagine evidence more potentially favorable to a defendant than the possibility of another person's *confession* to the crime for which he has been convicted coupled with a suggestion of a second source of information in support.

(Appendix D at 7d) (emphasis supplied).

The federal district court stated:

[Stinson's] statement could be viewed by a trier of fact as a *confession* which would by logical necessity exculpate Monroe.

. . .

In light of the Court's careful evaluation of the record, the fact that Stinson made a statement that could be reasonably construed as a *confession* leads this Court to find that this evidence creates a reasonable doubt as to Monroe's guilt that did not previously exist.

(Appendix C at 4c-5c) (emphasis supplied).

ment." State Br. at 6, 8. Then, without blinking an eye, the State "submits that there is no current dispute between the state and federal courts." *Id.* at 8. But if collateral estoppel means anything, it must mean that the state court is bound by a federal court's judgment, including the findings of fact and law in support thereof. See Petition for a Writ of Certiorari at 17-24. The State does not -- because it cannot -- explain why this well-established doctrine of collateral estoppel does not apply here.

The State also ignores the doctrine of collateral estoppel when it tries to justify the Criminal District Court's "refusal to accept the federal court's finding that this evidence is '*Brady*' material." State Br. at 8. The State argues that "[r]easonable minds, and reasonable judges, may differ over whether the evidence . . . constitutes *Brady* material" *Id.* Even if reasonable minds could differ over the federal district court's *Brady* findings here -- a proposition we seriously doubt -- that is besides the point. The essence of the doctrine of collateral estoppel is not reasonableness, but finality. Collateral estoppel would be emptied of meaning if the reasonableness of an argument rejected by a first tribunal were justification enough for retrying the identical issue before another tribunal.

Finally, the State ignores the doctrine of collateral estoppel when it states that "the federal district court made a clearly erroneous misapplication of the rule of *Brady v. Maryland*" State Br. at 6. Even putting to the side the State's failure to utter a word in support of this assertion, the proper procedure for challenging the federal district court's *Brady* findings would have been a direct appeal in the federal courts. But the State chose not to do so. After failing to ap-

peal, the State cannot be heard to collaterally attack the federal district court's *Brady* findings in the Criminal District Court.

The State's real point -- which it makes through innuendo rather than outright -- is that the Louisiana courts should be allowed to ignore a federal court's *Brady* findings simply because the State disagrees with those findings. By hook or by crook, the State wants to give the last word to the Criminal District Court, which defied the mandate of the federal courts on both the law and the facts. Only thus can the State hope to execute a man whom a federal court has found possibly innocent of the crime for which he has been condemned to die.

* * *

In its attempt to drown out the federal district court's *Brady* findings, the State repeats several times that Monroe received a "fair and impartial trial." State Br. at 7, 8, 9. The State misses the point. The conviction which resulted from the entire trial process, including the post-conviction period, was not fair and impartial. Rather, it was marred by constitutional violation.

After being alerted by Michigan law enforcement officials that another man confessed to the crime for which Monroe had been sentenced to death, the State of Louisiana failed to disclose the new evidence to anyone, let alone Monroe or his defense counsel. When appellate defense counsel, who had learned of the evidence by a fluke, presented it to the Criminal District Court, that court refused to hold an evidentiary hearing, denied Monroe's *Brady* claim and denied Monroe's motion for a new trial. Only eight hours before he was scheduled to die, the federal district court granted a stay

of execution. Then, after a full and fair evidentiary hearing, a federal magistrate found that the suppressed evidence was credible and created a reasonable doubt as to Monroe's guilt. Upon a *de novo* review of the record, a federal judge adopted the magistrate's findings and conclusions as his own. The State did not even appeal to the Fifth Circuit. But now the Criminal District Court wishes to reach the same result as it had before -- ignoring a federal court's unequivocal findings of a constitutional violation. This the state court may not do. Not only is the State collaterally estopped from doing so but the Supremacy Clause forbids it.

Conclusion

For the foregoing reasons and for all the reasons stated in the Petition for a Writ of Certiorari, the Petition for a Writ of Certiorari should be granted.

Dated: April 1, 1988

Respectfully submitted,

Allan Blumstein
(Counsel of Record)
Douglas G. Morris
Paul, Weiss, Rifkind, Wharton
& Garrison
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

John DiGiulio
331 St. Ferdinand
Baton Rouge, Louisiana 70802
(504) 383-0078